

LOCAL BANKRUPTCY RULE 7016-1

STATUS CONFERENCE, PRE-TRIAL AND TRIAL PROCEDURE

The procedures required by this rule modify and take the place of the procedures set forth in F.R.Civ.P. 16(b).

(a) STATUS CONFERENCE

In any adversary proceeding, the clerk shall issue summons and notice of the date and time of the status conference.

- (1) Who Shall Appear. Each party appearing at any status conference shall be represented by either the attorney (or the party if without counsel) who is responsible for trying the case or the attorney who is responsible for preparing the case for trial.
- (2) Contents of Joint Status Report. Unless otherwise ordered by the court, at least **10 court 14** days before the date set for each status conference, the parties are mutually required to file a Joint Status Report discussing the following:
 - (A) State of discovery, including a description of completed discovery and detailed schedule of all further discovery then contemplated.
 - (B) A discovery cut-off date.
 - (C) A schedule of then contemplated law and motion matters.
 - (D) Prospects for settlement.
 - (E) A proposed date for the pre-trial conference and/or the trial.
 - (F) Whether and when counsel have met and conferred in compliance with Local Bankruptcy Rule 7026-1.
 - (G) Any other issues affecting the status or management of the case.

- (H) Whether the parties are interested in alternative dispute resolution.

If defendant has not responded to the complaint or fails to cooperate in the preparation of a joint status report, then plaintiff shall file a unilateral status report not less than ~~8-court~~ 10 days before the date set for each status conference, unless otherwise ordered by the court. The unilateral status report shall contain a declaration setting forth the attempts made by plaintiff to contact or obtain the cooperation of the defendant.

- (3) Scheduling Order. Unless otherwise ordered by the court, within 7 court days after the status conference, the plaintiff shall submit a Scheduling Order setting forth the following:

- (A) Deadline to join other parties and to amend the pleadings;
- (B) Deadline to complete discovery;
- (C) Deadline to file joint pre-trial order and any pre-trial motions;
- (D) Any dates set for further status conferences, a final pre-trial conference, and the trial;
- (E) Any other appropriate matter; and
- (F) Proof of service on all opposing counsel, or parties if parties are not represented by counsel.

(b) JOINT PRE-TRIAL ORDER

- (1) When Required. In any adversary proceeding or contested matter, unless otherwise ordered by the court, attorneys for the parties shall prepare and file a written joint pre-trial order approved by counsel for all parties. Unless otherwise specified by the court, the joint pre-trial order shall be filed and served not less than 14-~~court~~ days before the date set for the ~~trial or~~ pre-trial ~~conference, if one is ordered~~. Preparation and filing of the pre-trial order shall be the responsibility of the parties' counsel, and it shall be equally the responsibility of the parties themselves if the parties are not represented by counsel. All parties shall meet and confer at least ~~21~~ 28 days before the date set for trial or pre-trial conference, ~~if one is ordered~~, for the purpose of preparing the pre-trial order.

- (2) Contents of Pre-Trial Order. Said order shall include the following statements in the following order:
- (A) “The following facts are admitted and require no proof.” (Set forth a concise statement of each.).
 - (B) “The following issues of fact, and no others, remain to be litigated.” (Set forth a concise statement of each.).
 - (C) “The following issues of law, and no others, remain to be litigated.” (Set forth a concise statement of each.).
 - (D) “Attached is a list of exhibits intended to be offered at the trial by each party, other than exhibits to be used for impeachment only. The parties have exchanged copies of all exhibits.” (Attach a list of exhibits in the sequence to be offered, with a description of each, sufficient for identification, and as to each state whether or not there is objection to its admissibility in evidence and the nature thereof.) If deposition testimony is to be offered as part of the evidence, the offering party shall comply with Local Bankruptcy Rule 7027-1(a).
 - (E) “The parties have exchanged a list of witnesses to be called at trial.” The parties shall exchange a list of names and addresses of witnesses, including expert witnesses, to be called at trial other than those contemplated to be used for impeachment or rebuttal. The lists of witnesses shall be attached to the proposed joint pre-trial order and shall describe concisely the subject of their proposed testimony. If expert witnesses are to be called at trial, the parties shall exchange short narrative statements of the qualifications of the expert and the testimony expected to be elicited at trial. If reports of experts to be called at trial have been prepared, they shall be exchanged but shall not substitute for the narrative statement required.
 - (F) “Other matters that might affect the trial, such as anticipated motions in limine, motions to withdraw reference due to timely jury trial demand pursuant to Local Bankruptcy Rule 9015-2, or other pre-trial motions.”
 - (G) “All discovery desired to be conducted has been completed.”
 - (H) “The parties are ready for trial.”
 - (I) “The estimated length of trial is _____.”

- (J) “The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this order shall supersede the pleadings and govern the course of trial of this cause, unless modified to prevent manifest injustice.”

(c) PLAINTIFF’S DUTY

It shall be the duty of plaintiff to prepare and sign a proposed joint pre-trial order and to serve it in such manner so that it will actually be received by the office of counsel for all other parties not later than 4:00 p.m. on the fifth court day prior to the last day for filing said proposed pre-trial order. The order as proposed by plaintiff shall be complete in all respects except for other parties’ lists of exhibits and witnesses.

(d) DUTY OF PARTIES OTHER THAN PLAINTIFF

Within 3 court days following other parties’ receipt of plaintiff’s proposed order, it shall be the duty of each other party to take action as follows:

- (1) Agreement With Form of Proposed Order. If plaintiff’s proposed order is satisfactory, attach that party’s list of exhibits and witnesses to the order, indicate approval of the proposed order by signature, file it with the clerk in time to be received within the time prescribed in paragraph (b)(1) of this Local Bankruptcy Rule, and serve all other parties with a completed copy of the order so filed; or
- (2) Disagreement With Form of Proposed Order. If plaintiff’s proposed order is unsatisfactory:
 - (A) Immediately meet with or telephone plaintiff in a good faith effort to achieve a joint proposed order; and
 - (B) If such effort is unsuccessful, prepare a separate proposed order and file it, together with plaintiff’s order and a declaration of that party setting forth the efforts made to comply with subparagraph (A) immediately above. These shall be filed and served in such a manner that they will actually be received by the clerk and the plaintiff all within the time set forth in paragraph (b)(1) of this Local Bankruptcy Rule.

(e) NON-RECEIPT OF PROPOSED JOINT PRE-TRIAL ORDER

- (1) If the plaintiff has complied with paragraph (c) above and does not receive a timely response from the other parties, it shall file and serve its unilateral pre-trial order at least 14 court days before the trial or pre-trial conference, if one is ordered. At the same time, plaintiff shall file and serve a declaration asserting the failure of the other parties to respond.**
- (2) If parties other than plaintiff have not received plaintiff's proposed pre-trial order within the time limits set forth in paragraph (c) above, ~~by 10 court days before the trial or pre-trial~~ it shall be the duty of each such other party to prepare, file and serve ~~a unilateral proposed pre-trial order in compliance with subparts (b) and (d)(2)(B) of this Local Bankruptcy Rule, at least 5 court days before the trial or pre-trial.~~ at least 14 days prior to the trial or pre-trial conference, if one is ordered, a declaration attesting to plaintiff's failure to prepare and serve a proposed pre-trial order in a timely manner.**

(f) SANCTIONS FOR FAILURE TO COMPLY WITH THIS RULE

If a status conference statement or a joint proposed pre-trial order have not been filed within the time set forth in paragraphs (a) or (e) above, the court may do any or all of the following:

- (1) Continue the trial date, if no prejudice is involved to the party who is not at fault.
- (2) Award monetary sanctions including attorneys' fees against the party at fault, payable to the party not at fault. Said sanctions shall be assessed against the party at fault and/or counsel, in the court's discretion.
- (3) Award non-monetary sanctions against the party at fault. These may include the entry of a judgment of dismissal or the entry of an order striking the answer and entering a default.

(g) FAILURE TO APPEAR AT HEARING OR PREPARE FOR TRIAL

Failure of counsel for any party to appear before the court at status conference or pre-trial conference or to complete the necessary preparations therefor or to appear at or to be prepared for trial may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or as to the entire proceeding.

Court's Comment

2001 Revision

Paragraph (b)(1) JOINT PRETRIAL ORDER. The number of days to file and serve a pre-trial order was changed from 14 court days to 14 days (calendar). The number of days all parties must meet and confer was changed from 21 to 28 days prior to the date set for trial or pre-trial conference.

Paragraph (e) NON-RECEIPT OF PROPOSED JOINT PRE-TRIAL ORDER. New paragraph (e)(1) was added stating: *If the plaintiff has complied with paragraph (c) above and does not receive a timely response from the other parties, it shall file and serve its unilateral pre-trial order at least 14-court-days before the trial or pre-trial. At the same time, plaintiff shall file and serve a declaration asserting the failure of the other parties to respond.*

Paragraph (e). The former first paragraph became (e)(2) with the following changes: the time for receipt by parties other than the plaintiff of a proposed pre-trial order was revised from 10 court days to *within the time limits set forth in paragraph (c) above.* ~~the time to file and serve a unilateral proposed pre-trial order was increased from 5 court days to 14 court days; and this unilateral pre-trial order is required to be in compliance with subparts (b) and (d)(2) rather than with (b) and (d)(2)(B).~~ If a pre-trial order is not served within the time limits set forth in paragraph (c) above, requirements for a declaration have been outlined.

1998 Revision

Paragraph (a)(1). *Pro se* changed to *without counsel* for consistency with other rules.

Paragraph (a)(2). *Court* added between *ten* and *days* in the first sentence. Subsection (H) added pursuant to the mediation program. New last sentence added regarding declaration setting forth attempts made by plaintiff to contact or obtain the cooperation of defendant.

Paragraph (a)(3). *And* added to end of subsection (E); new subsection (F) added.

Paragraph (d). *To take action as follows:* added at end of first sentence.

Paragraph (d)(1). *To* deleted before *attach, indicate, file, and serve.*

Paragraph (d)(2)(A). *To* deleted before *meet.*

Paragraph (d)(2)(B). *To* deleted before *prepare.*

Paragraph (f). *Status conference statement or a* added to first sentence; *has* changed to *have*, and *paragraph (e)* changed to *paragraphs (a) or (e)*, in the first sentence.